

**ARIZONA WATER BANKING AUTHORITY**  
**Final Minutes**

**AUGUST 21, 2002**  
**Arizona Department of Water Resources**

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**I. Welcome and Purpose of Workshop**

Chairman Joseph C. Smith welcomed everyone to the workshop and thanked the CAWCD Board members for attending. Mr. Smith stated that the workshop was held pursuant to a request by the Authority for a review of the interstate water banking process and an update of the Nevada Water Resources Plan. The objectives of the meeting were: (1) provide answers to questions or concerns regarding interstate water banking; (2) review the importance of the program in the context of the Law of the River; and (3) to move closer to implementation of the program.



**II. Discussion of the Interstate Water Banking Program**

Summaries of the various presentations are presented below. Hard copies of presentations are available from the AWBA by contacting Nan Flores.

***A. History and Importance of Interstate Water Banking – Herb Dishlip, ADWR***

*Mr. Dishlip prefaced his presentation with the statement that he would provide a look at how the state got to the point of interstate water banking, recognizing that history is a matter of perspective. (Mr. Dishlip's presentation is described in greater detail because handouts were not available to accompany it.)*

In the mid-1980's, things got interesting in water management. There was increasing trepidation in California regarding decreased water availability in light of the near completion of the Central Arizona Project (CAP) canal. The first CAP deliveries were made in 1985. California had historically used as much as 5.2 MAF but this was within the parameters of the Law of the River because it was within the 7.5 MAF allocation of the Lower Basin, specifically from Arizona's unused allocation.

As the CAP moved nearer to completion, Arizona put pressure on California to decrease their use to 4.4 MAF. Also of importance to Arizona was that Metropolitan Water District of Southern California's (MWD) M&I use be included within the 4.4 MAF. California responded by preparing a 30-year step down plan that included such things as water transfers and conservation measures. In 1988, MWD entered into an agreement with the Imperial Irrigation District to decrease water use. The MWD also proposed an experimental program with Palo Verde Irrigation District for land fallowing and storage of water in Lake Mead. However, at this time, CAP utilization actually began to decrease due to issues associated with pricing. Consequently, the momentum for California to work toward 4.4 MAF was lost. If Arizona was going to still leave unused allocation on the river; it really didn't make sense for California to expend funds to develop alternative supplies.

At the same time, Nevada began experiencing water supply issues due to their booming population growth. It became apparent that the 300,000 AF allocation held by Nevada would soon be insufficient for their needs. In response, Nevada formed the Southern Nevada Water Authority, combined all of their contract allocations, initiated conservation efforts and worked to negotiate a favorable manner for calculation of their return flow credits. Nevada's goal with these measures was to extend the period of time until demand reached their 300,000 AF consumptive use limit.

During this period of uncertainty, the Upper Basin states believed that these issues were relative only to the Lower Basin and they asked the Lower Basin to attempt to resolve the issues of meeting California and Nevada's water needs internally. To do this, the Lower Basin states held several meetings and recognized that technical work needed to be done. A technical committee was formed to examine the widest range of possible options absent the legal and technical parameters. In short, they were looking "outside the box". Some of the options that were identified were: (1) modification of the surplus criteria to make more water available; (2) extraordinary conservation measures; (3) interstate transfers and top water banking in Lake Mead; (4) wheeling of tributary supplies through the Colorado River system; and (5) off-stream banking, primarily in Arizona due to presence of existing regulations and infrastructure. The idea of "no harm, no foul" was proposed in the process but Arizona strongly objected to this idea because it was felt that any change to the Law of the River could harm Arizona. Arizona also did not support the idea of top water banking or interstate transfers. Nonetheless, California and Nevada formed a coalition and proposed a program of conservation and interstate transfer. As a result, Arizona withdrew from the technical committee process and it ultimately terminated.

One of the options developed out of the Technical Committee process that was acceptable to Arizona was a more liberal surplus criteria. Arizona approached the other basin states and proposed that any plan to develop more generous operating criteria was actually a 7-state issue and not just a Lower Basin consideration because of the scope of its impacts. Arizona also composed a policy position statement that put forth their position on the range of options. Specifically, the state disagreed with the concept of "no harm, no foul", and rejected programs for wheeling of tributary water, interstate conservation and transfer and top water banking. The letter stated that if these options were pursued, opposition from Arizona could be expected. However, Arizona was willing to further discuss modification of operating criteria and off-stream banking to create unused apportionment under Article II.B.6 of the decree in *Arizona v. California*. This willingness to discuss some options was recognized as progress for Arizona, who had historically proved difficult where the Colorado River was concerned.

Discussion regarding the concept of off-stream banking and interstate water banking began. It was recognized that: (1) this should be a state to state program and not between individual contractors or entities; (2) it would require legislation, even though the earlier pilot project had been done between CAP and MWD and SNWA; (3) the Secretary of the Interior would need to be involved; and (4) the priority would be that intrastate needs would be met first and interstate needs only after all intrastate met. With these things in mind, there was strong support for a water banking program in Arizona and a legislative package was developed. Some key components of the legislation were: (1) the Secretary of the Interior would be required to adopt rules regarding off-stream banking to insure Arizona's rights were protected; (2) recovery was limited to 100,000 AF per year; (3) recovery would be suspended in times of shortage; (4) controversial issues would be omitted from the legislation and addressed later by a Study Commission that would be formed pursuant to legislation. Ultimately, the Study Commission made only minor revisions to the legislation pertaining to the interstate water banking process in the form of the nature of disposition of the *in lieu* tax collected from interstate entities.

Throughout the development of the AWBA, California and Nevada both expressed interest in interstate water banking. It was recognized that California's needs greatly exceeded the amount of water that could be provided through the process, however, Nevada could benefit from participation. The interstate water banking component of the AWBA's legislation was supported by the basin states because it provided a level of comfort that other options did not. This program did not fundamentally alter the Law of the River and would occur under the existing Article II.B.6 of the decree. Further, the program had limited application and a limited horizon because Arizona would ultimately fully utilize its allocation.

Development of the AWBA also led to a strong six state coalition regarding development of the Interim Surplus Guidelines (ISG). Because Nevada was now receiving some assurances that action would be taken to meet their needs, they were willing to join the other states and California eventually joined in as well. The inclusion of an interstate component in the AWBA enabled the states to reach consensus on the ISG and established principles for interstate comity. Although the processes were separate, there is a similarity between them and the consensus building process and comity resulted in decreased potential for controversy and litigation. Further, cooperative action between the states also decreased the need for federal intervention. The offer of interstate water banking paved the way for a new regime of water management in the Colorado River basin.

There were no questions for Mr. Dishlip.

#### ***B. Interstate Banking Agreements – Tim Henley, AWBA***

Mr. Henley's presentation summarized the various agreements needed to initiate an interstate water banking program and updated the audience on their status. The agreements are: (1) Agreement for Interstate Water Banking (IWBA); (2) Storage

and Interstate Release Agreement (SIRA); and (3) Agreement for the Development of Intentionally Created Unused Apportionment (ICUA). For each of these agreements, Mr. Henley reviewed the objectives/role of the agreement and the responsibilities of each party entering into it <sup>1</sup>. Mr. Henley also discussed the availability of CAP water through 2025 and the amount that could be available for interstate water banking purposes. Finally, Mr. Henley reviewed the ancillary agreements needed to permit delivery, storage, and ultimately, recovery of water stored in the interstate water banking process.

George Renner asked Mr. Henley to explain how the stored water would be physically recovered. Mr. Henley stated that the early recovery would likely be through the exchange method (described in the SIRA) and would likely occur before Arizona needs to recover water for firming. Specific recovery plans have not yet been developed and that is why the interstate agreements require notice three years prior to development of ICUA.

CAWCD Board member Grady Gammage, Jr. asked Mr. Henley to “follow the money” and describe how the state of Arizona would benefit from interstate water banking. Mr. Henley stated that interstate water banking would provide benefit in that the CAP would gain another full-paying customer. However, he noted that the AWBA is not going to make a monetary profit through the process and was never intended to. Joseph C. Smith added that another benefit is that the *in lieu* tax collected from Nevada for water delivery directly benefits the Water Protection Fund. Rita Maguire also noted that interstate banking would allow more complete utilization of storage facilities.

Dick Walden asked Mr. Henley to address Arizona’s full utilization of their allocation. Mr. Henley replied that full utilization is occurring now without interstate banking but that AWBA use could drop off because of funding constraints. Interstate water banking could take the place of intrastate banking if that occurs. Mr. Henley stressed that the issues regarding Arizona’s full utilization of their Colorado River allocation are still out there so it is always important to fully utilize the water whenever possible.

Bill Chase asked Mr. Henley to describe other SIRA approved methods of recovery, specifically transfers. Mr. Henley described how a transfer would work using the CAGR as an example.

Mr. Renner questioned how it would be handled if Arizona did not want to participate in any year. Mr. Henley responded that: (1) the decision to store is made on an annual basis and the AWBA can choose in any year to not offer storage to Nevada; (2) for recovery (development of ICUA), there are limits during shortage years; and (3) the agreements can be terminated at any time, but to the extent that Nevada has paid for and developed credits in Arizona, they could take Arizona to court for failure to perform.

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<sup>1</sup> Please see a hard copy of the presentation for specific information regarding the discussion.

Mr. Renner also asked about the identification of benchmarks in the agreements in addition to the inclusion of the step-down process. Mr. Henley replied that there are no other benchmarks identified. However, the IWBA states that this is a temporary supply of water to Nevada and requires Nevada to participate/cooperate in the AWBA's Annual Plan of Operation process. Mr. Henley stated that establishment of firm benchmarks could limit the flexibility of the AWBA and SNWA in this process.

#### *C. Nevada's Water Resources – Kay Brothers, Southern Nevada Water Authority (SNWA)*

Ms. Brothers presented information on the Water Resources Plan done by SNWA. The plan is reviewed and approved annually and revised as needed. The last plan was completed in 1999 and a new plan was approved in 2002. The plan was amended due to increased demand and population growth, increased diversions from the Colorado River and the need to provide the SNWA board updates regarding other water resources. Ms. Brothers described the urban development of the Las Vegas Valley, the water resources available to the SNWA and how SNWA intended to meet their forecast demand through 2050<sup>2</sup>. She concluded by stating that interstate water banking is an important interim resource bridge for the SNWA.

CAWCD Board member Jim Hartdegan asked Ms. Brothers how the desalinization of water would occur. Ms. Brothers replied that it was being looked at in conjunction with Metropolitan Water District of Southern California and would cost approximately \$250/acre foot. She also stated that brine disposal was the greatest problem with desalinization.

Mr. Renner asked the source of funding for the \$600-700 million program being proposed. Ms. Brothers replied that a new capital construction program was recently developed and that the money would come from water connections.

Mr. Chase questioned whether there were social concerns about movement of groundwater between counties<sup>3</sup>. He noted that this has been an issue of concern in Arizona. Ms. Brothers replied that the water was from within Clark County and that there were some concerns but that SNWA believed the problems were solvable in the short term.

#### *D. Role of the Bureau of Reclamation – Bob Johnson, U.S. Bureau of Reclamation*

Mr. Johnson referred the audience to his presentation<sup>4</sup> but did not go through it in the interest of saving time. He stated that the federal government encourages interstate cooperation and finds this interstate water banking process commendable.

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<sup>2</sup> Please see a hard copy of the presentation for specific information regarding the discussion.

<sup>3</sup> The SNWA Water Resources Plan includes importation of groundwater into Las Vegas, however, the water is still coming from within Clark County.

<sup>4</sup> Please see a hard copy of the presentation for specific information regarding the discussion.

He also stated that the Bureau of Reclamation, in their role as water master of the Lower Basin, would administer the river pursuant to these agreements and the Law of the River and does not recognize interstate water banking as a permanent water supply for Nevada. He stated that the Law of the River and the interstate water banking agreements provide protection for Arizona. In closing, he used the example of California to prove his point. California has been relying on a “temporary” water supply, specifically Arizona’s unused allocation, for the past 40-45 years and the Bureau is forcing them to take tough measures to stop their use of this supply.

Mr. Renner asked Mr. Johnson if the federal government would ever interject a federal decision into this process or if they would respect Arizona’s desires regarding storage. Mr. Johnson replied that the Bureau will only enforce the agreements as executed.

#### *E. Public Comment*

Rita Maguire reiterated some of the historical points made by Mr. Dishlip and said that when the idea of interstate banking was conceived, Arizona was facing some difficult and uncertain times. Consequently, the decision was made to work cooperatively instead of fighting the other Lower Basin states. Interstate water banking made sense and gained support because: (1) it preserved the Law of the River; (2) it was a state to state program with federal involvement, as needed, but it was not a federally mandated program; (3) decisions were made on an annual basis; and (4) it was dependent on unused apportionment. She said that the agreements described by Mr. Henley provide additional protection to Arizona in addition to that provided by federal or state statute. Ms. Maguire listed the tangible and intangible benefits of interstate water banking. Tangible benefits are: (1) flow of money into the state; (2) another entity to utilize recharge facilities; (3) makes management more flexible; and (4) forces California to the table. The two intangible benefits are: (1) a cooperative relationship is better than the uncertainty associated with litigation; and (2) enhancement of the Law of the River because it shows that the Law can be flexible and applicable to changing conditions in the Basin.

Marvin Cohen stated that water banking was developed in response to interstate needs and he is very concerned that interstate water banking will not come to fruition. The teaming up of California and Nevada was a very serious threat and should not be forgotten. He concluded by saying that there is currently a “changing of the guard” occurring and he hopes that the entities responsible for making a decision regarding interstate water banking take into consideration the damage that could be done if the trust that was created over time between Arizona and Nevada is violated.

Doug Nelson stated that the Arizona Rural Water Association supports water banking and the full use of Arizona’s allocation. However, the Association has concerns that the rural community is also being faced with lack of water supply and also requires a bridge resource in developing their water supplies.

Mr. Renner stated that he is personally still struggling with the timing issue. Right

now, Arizona is facing the issue of California's overuse and working toward getting their use within their allocation. And at the same time, he believes, we are looking at letting Nevada do the same thing, i.e. use more than their allocation. His question is how can we be critical of one neighbor exceeding their budget while encouraging another to do the same? He is also concerned about Arizona's ability to terminate this process because he thinks it may be necessary in the future. He asked Ms. Brothers about the inclusion of water transfers in the Water Resources Plan and mentioned entities in Nevada speaking about changing the Law of the River. He asked her if she could alleviate his concerns about future threats to the Law of the River. Ms. Brothers spoke to the water issue and said that things have changed internally in Nevada and the SNWA's is now looking at alternate, non-Colorado sources to meet their needs. She stated that the partnerships that have been developed are invaluable to Nevada and they will preserve those partnerships within the Law of the River. Mr. Henley interjected and supported Ms. Brother's statement. He said that Nevada has had opportunities to attempt to secure the ability to wheel Virgin River water through the Colorado River system and have deferred this because of the partnerships that have been built. Jim Davenport stated that we should not let the Law of the River be our straitjacket. For example, the CAP is currently the lowest priority on the river and Nevada thinks that should be changed to give the CAP a higher priority and has stated so publicly. He concluded that Nevada will continue to support Arizona in this effort.

### **III. Potential Action – Approval of the Storage and Interstate Release Agreement**

No action or discussion on this item.

The meeting adjourned at 12:15 p.m.